

TENNESSEANS
for
IMPROVING PUBLIC
ACCOUNTABILITY

REPORT

Metro's Contract
with Corrections Corp. of America
to Operate the
Metro-Davidson County Detention Facility

March 15, 2010

***T/I
P/A*** **TENNESSEANS FOR IMPROVING
PUBLIC ACCOUNTABILITY**

P.O. Box 60776, Nashville, TN 37206-0776 • (615) 216-4885 • tipatn@gmail.com

March 15, 2010

Metropolitan County Council
Metropolitan Courthouse
One Public Square, Suite 204
Nashville, TN 37219

RE: TIPA Report on Metro-Davidson County Detention Facility

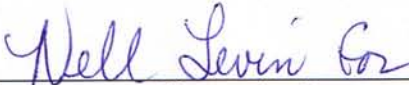
Dear Metro Council Members:

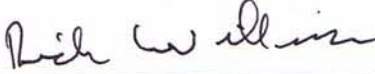
Tennesseans for Improving Public Accountability (TIPA), a citizen watchdog group that works to ensure transparency and accountability in government operations in Tennessee, is pleased to present you with this unsolicited report on Metro's contract with Corrections Corp. of America (CCA) to operate the Metro-Davidson County Detention Facility.

We believe this report raises significant issues of concern relative to Metro's ability to enforce its contract with CCA; with accountability and transparency in terms of the public's ability to obtain information about CCA's operation of the facility; and with the overall value that Metro taxpayers are receiving based on the quality of CCA's management.

The undersigned organizations have reviewed the report and share our assessment. We therefore encourage the Council to further investigate the issues raised in this TIPA report.

Concurring organizations:


Tennessee Alliance for Progress


Common Cause of Tennessee


Tennessee C.U.R.E.

cc: Mayor Karl Dean
Sheriff Daron Hall
Corrections Corp. of America

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**TIPA Report on Metro's Contract with CCA to Operate
the Metro-Davidson County Detention Facility**

Introduction

On August 1, 2009, the Metropolitan Government of Nashville and Davidson County ("Metro") renewed its contract with Corrections Corporation of America (CCA) to operate the 1,092-bed Metro-Davidson County Detention Facility (MDF).¹ The facility primarily houses prisoners who are serving sentences of one to six years. The five-year contract is valued at \$91.8 million – an increase of \$11 million over Metro's previous contract with CCA to operate MDF.²

The \$11 million increase is not due to expanded or improved services by CCA. Rather, that was CCA's bid for the MDF contract based on the company's increased per-diem rates. There were no other bidders.³ This lack of competition, in which CCA essentially set its own price which Metro agreed to pay, raises serious questions about the value received by taxpayers.

Tennesseans for Improving Public Accountability (TIPA) is concerned there is a lack of public accountability relative to Metro's contract with CCA, both in terms of contract monitoring and compliance, due to numerous incidents that have occurred at MDF over the past several years which indicate taxpayers may not be receiving the value they are paying for under the contract. Those incidents include an inmate homicide, suicide and medical-related deaths, mistreatment of mentally-ill prisoners, an escape, plus other issues as described in this report.

Notably, although many of these incidents may have constituted violations of Metro's contract with CCA, the contract lacks enforcement provisions to ensure compliance. For example, Metro is unable to levy fines against CCA or withhold contractual payments as sanctions.

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Nashville, TN 37206-0776
(615) 216-4885
tipatn@gmail.com • www.tipatn.org

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Death of Inmate Terry Battle

Inmate Terry Wayne Battle, 55, died at MDF on June 3, 2008. According to his autopsy report, although he suffered from hypertension, hepatitis C, blindness in one eye and gastroenteritis, his death resulted from pneumonia – a treatable disease.⁴ Mr. Battle's pneumonia was advanced and untreated at the time of his death. The autopsy report noted "diffuse consolidation and purulent exude [in] all lobes of both lungs" and "yellow-green purulent material" in his lungs, and found his death was caused by "severe, bilateral pneumonia."⁵

Other inmates reported that Mr. Battle was too sick to eat or walk, and attempted to send in sick call requests on his behalf. One week before Mr. Battle died, he was seen by medical staff and found to have a temperature of 102.2 and a pulse of 128 – both of which should have resulted in a referral for further medical evaluation. The nurse who saw him did not make a referral or notify a doctor, but rather prescribed Motrin. Mr. Battle was seen again, on May 27, and found to have abnormally low blood pressure of 98/69. He still did not see a doctor. Despite seeing a nurse on an emergency basis on May 28, Mr. Battle was not seen by a doctor until June 2, the day before he died. He was not taken to a hospital until after he was found unresponsive in his cell; he was pronounced dead at the hospital.⁶

Approximately one week before Mr. Battle died, CCA's Health Services Administrator at MDF, Barbara Cawthorne, R.N., reported to CCA officials gross professional misconduct involving a nurse and a CCA officer. Specifically, Mrs. Cawthorne reported that a nurse was performing oral sex on a CCA officer at the facility during work hours. She said CCA refused to take corrective action, and Mrs. Cawthorne resigned in protest on May 27, 2008.⁷ Therefore, at the time that Mr. Battle died due to pneumonia – a treatable condition – no Health Services Administrator was present at the facility to coordinate and supervise inmate medical care.

According to Section 4.6 of Metro's contract, the "Contractor will provide medical services ... in accordance with current ACA Standards, National Commission on Corrections Health Care Standards for Health Services in Prisons, federal, state, local law, and its Proposal, including 24 hour a day, seven day a week emergency medical, psychiatric and dental care," and "shall provide on-site nursing care, 24 hours a day, seven days a week" CCA's failure to provide adequate medical care to Mr. Battle, resulting in his preventable death due to pneumonia, was an apparent violation of Metro's contract.

The lack of medical care provided to Mr. Battle is particularly troubling as it indicates a long-standing problem in regard to medical treatment at MDF. In February 2006, Teresa Hazelwood, a former CCA nurse at MDF, stated in a sworn affidavit that "the facility's medical unit was understaffed and over-worked for the number of prisoners, preventing proper medical care of all of the prisoners." She also wrote, "The facility often relied on non-medical personnel to make

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medical decisions for prisoners,” and, “I have worked in nursing and corrections for many years. CCA’s continuing mistreatment of prisoners is the worst I have ever witnessed.”⁸

Ms. Hazelwood provided her affidavit in a lawsuit filed by Meredith Manning, a pregnant inmate who said she was denied medical care by CCA during her stay at MDF in 2004. Ms. Manning claimed that CCA staff ignored her pleas for help when she experienced vaginal bleeding over a three-day period while she was held in a solitary cell. Her child lived only three hours after being born.⁹ Ms. Manning’s lawsuit was settled by CCA in August 2008 under confidential terms.

Note: CCA entered into a confidential settlement with Mr. Battle’s family before a lawsuit was filed; thus, most of the details concerning his death were not made public. At the time of his death Mr. Battle was pursuing a lawsuit himself in federal court, alleging that he was attacked by a maximum-security inmate at MDF who had gotten out of his secured cell and struck him with a food tray while a CCA officer failed to intervene.¹⁰ A former CCA captain later stated in a sworn deposition that inmates at MDF were able to manipulate some of the cell doors so they would not lock properly, and could be opened by inmates from the inside.¹¹

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Treatment of Inmate Frank Horton

On March 24, 2008, the *Tennessean* published an article concerning the case of Frank Horton, a mentally-ill prisoner who spent nine months in segregation at MDF without leaving his cell for recreation, haircuts or showers, or to attend mental health board reviews.¹² His mental health deteriorated in segregation, resulting in his "inability to speak coherently."¹³

Mr. Horton's lengthy confinement in a "darkened, filthy" segregation cell¹⁴, during which time his mental health suffered and his hygiene was ignored, occurred with the full knowledge of CCA staff. Further, no action was taken by Metro's contract monitor at the facility, even though the monitor noted sanitation problems in the segregation area in several reports. For example, in June 2007 the monitor noted "cells cluttered and dirty in segregation," and cited a "possible fire hazard" and a potential "staph problem." In a September 2007 report the monitor wrote, "request updates on following segregation issues ... Sanitation and documentation." In October 2007 the contract monitor stated, "sanitation in seg still issue, if done not correctly documented. What's documented [is] sketchy."¹⁵ These problems were noted while Mr. Horton was being held in segregation in unsanitary conditions over a nine-month period.

This was an apparent violation of Section 4.32 of Metro's contract, which states "The Contractor shall provide for sanitation and hygiene in accordance with its Proposal and Metro's RFP."

The problems with Mr. Horton's confinement at MDF only came to light after a CCA employee, Captain Patrick Perry, contacted the Metro Public Health Department. "The man's hair, his beard was matted up," said Mr. Perry. "I had never seen an inmate live in those kinds of conditions."¹⁶

Catherine Seigenthaler, director of the Department's Correctional Health Services, had contract monitor Sheila Madden assess Mr. Horton. Ms. Madden noted that Mr. Horton "was reported to be cooperative, nodding to questions with sporadic answers in unintelligible words." However, she "could not adequately assess his orientation due to his inability to speak coherently." She requested that Mr. Horton receive a mental health evaluation "as soon as possible."¹⁷

Pursuant to Section 4.5 of Metro's contract, CCA is responsible for providing "counseling and mental health programs," and such programs "will be supported by case management procedures that ensure an ongoing record documenting the inmate's progress." This apparently did not occur in Mr. Horton's case, and thus may have constituted a contract violation.

Note: Frank Horton's grandmother later filed a lawsuit against CCA related to his treatment at MDF.¹⁸ The suit was dismissed by the District Court in August 2009, in part because Mr. Horton had not exhausted the administrative grievance process at MDF, despite his mental illness, and because the nine months he spent in segregation without recreation or a shower did not constitute "physical injury" under the Prison Litigation Reform Act.¹⁹ The case is now on appeal.

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Incident Reporting at MDF

Former CCA Captain Patrick Perry, the whistle-blower who reported Mr. Horton's treatment in segregation, also revealed why that situation was allowed to occur. According to his testimony in a sworn deposition, Mr. Perry stated that Mr. Horton was allowed to stay in his cell for months without recreation or a shower in order to decrease the facility's use-of-force reports.²⁰

According to Mr. Perry, CCA employees received annual bonuses that were based, in part, on how well their facility performed in terms of incident reports, including use-of-force incidents. Employees at facilities with fewer use-of-force reports, among other criteria, received larger bonuses; thus, there was a financial incentive to keep use-of-force reports to a minimum.²¹

When unwilling mentally-ill prisoners were removed from their cells for recreation or to take showers, use-of-force reports were generated. Mr. Perry stated that former MDF Warden Brian Gardner had instructed CCA officers not to remove such inmates from their cells, in order to reduce the number of use-of-force incidents and thus increase employees' annual bonuses as a result. "The less force you use, the better it looks for your facility, the better the bonuses are at the end of the year. And it's, it's all about the numbers," Mr. Perry stated in a sworn deposition. "They can be the difference between getting an \$80 bonus check and a \$500 bonus check."²²

Consequently, Mr. Horton remained in his segregation cell for nine months without being removed for recreation or showers, until Mr. Perry contacted the Metro Health Department. His statement related to CCA trying to reduce the number of use-of-force reports at MDF was noted in a January 31, 2008 memo from Catherine Seigenthaler related to Mr. Horton.²³

According to an internal CCA quality assurance report from October 2006, MDF ranked 11th among CCA's 65 facilities nationwide for highest rates of inmate-on-inmate assaults, and 7th for highest rates of use-of-force (with 53 use-of-force incidents reported at MDF between January 1 and October 12, 2006).²⁴ This tends to support Mr. Perry's claim that the administration at MDF had an incentive to reduce the high number of use-of-force reports – which in Mr. Horton's case meant not removing him from his segregation cell for recreation or showers.

It is not known whether CCA still bases employee bonuses on the number and type of incident reports at its facilities, including MDF.

Note: Mr. Perry resigned from CCA in April 2008 as a result of his contacting the Metro Health Department concerning Mr. Horton. As part of his separation from the company, he entered into a confidentiality agreement not to discuss his employment at CCA.²⁵ However, Mr. Perry was subpoenaed to give deposition testimony in several lawsuits filed against CCA, which resulted in the above information becoming a matter of public record.

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Murder of Inmate Gerald Townsend

On January 14, 2008, MDF inmate Gerald Townsend was fatally beaten in a segregation cell by his cellmate, Ronnie Sullivan, a larger prisoner with mental health problems who had threatened his previous cellmates.²⁶ The emergency call button in Mr. Townsend's cell reportedly was not working, thus he could not call for help while he was being assaulted.²⁷

Former CCA Captain Patrick Perry was the ranking officer on duty the night that Mr. Townsend was killed. According to a sworn deposition by Mr. Perry, the emergency call buttons in most of the segregation cells were non-functional. He said that "90 percent of them, 80 to 90 percent of them call buttons did not work [sic]."²⁸

Mr. Perry also stated that Sullivan, the inmate who killed Mr. Townsend, had previously been placed on suicide watch, claimed to be schizophrenic, homicidal and suicidal, and "had been a problem the whole time he was there. ... he was making threats against his cellmate" prior to being placed in a segregation cell with Mr. Townsend.²⁹ Sullivan was described as 6' tall and muscular, while Mr. Townsend was a "a very sick and frail individual."³⁰

CCA was already on notice that the non-functional emergency call buttons could endanger the safety of inmates at MDF. Mr. Perry testified that another prisoner, Brian Falk, was seriously assaulted and injured by his cellmate, Charles Williams, in 2007. According to Mr. Perry, "It was an assault serious enough for Brian Falk to leave in an ambulance and come back with his mouth wired shut because his jaw had been broke. And he screamed and hollered about pushing on the [emergency call] button and not getting help."³¹

According to Metro's contract (Section 4.1), "Weekly inspections shall be conducted to ensure that all locks, door control devices or systems, communication devices and systems ... and any other security devices or equipment are fully operational." The failure of CCA to timely fix the non-functional call buttons, which may have contributed to a serious assault on inmate Falk and the death of inmate Townsend, was a potential contract violation.

Further, according to Section 4.3 of Metro's contract, "The Contractor will be responsible for providing intake and an objective based classification system similar to Metro's system." The decision by CCA staff to place Mr. Townsend, a frail and sick prisoner, in a cell with a mentally ill inmate who had previously threatened his cellmates, resulting in Mr. Townsend's death, was a questionable classification assessment that may have constituted a contract violation.

Note: Former CCA warden Brian Gardner, who resigned from MDF in April 2008, was deposed in a lawsuit against CCA. Although the deposition was held just 8 months after Mr. Townsend's murder, Mr. Gardner said he didn't recall details about the incident, including Mr. Townsend's name or even how he had died, despite having been warden of the facility at the time.³²

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Mentally Ill Prisoner Shackled to Table

On August 15, 2008, an incident occurred at MDF involving a mentally ill inmate named Mark Sullivant. According to an internal CCA report, Mr. Sullivant was smearing feces in his medical observation cell, hitting his head on the toilet and the cell door, and threatening self-harm.³³ In response, Captain James Idleburg, a CCA shift supervisor, removed Mr. Sullivant from the cell, put him in restraints, and shackled him to a table for about one hour in violation of institutional policy.³⁴ Captain Idelburg later received a written reprimand.³⁵

The following concerns were noted in CCA's internal investigation of this incident:

- The Shift Supervisor did not notify the Duty Officer of a medical emergency or the use of restraints.
- Mr. Sullivant was improperly restrained to a table for approximately one hour.
- Although Mr. Sullivant was on suicide watch, no CCA officer was posted to observe him at fifteen-minute intervals.
- The incident was not videotaped, including when a CCA officer used inflammatory agents on Mr. Sullivant after he assaulted a staff member.³⁶

The investigative report noted that “this incident could have been prevented.”³⁷ Notably, however, CCA's internal investigation did not reference the fact that no mental health staff were called to deal with the situation involving Mr. Sullivant, who was on suicide watch at the time and threatening self-harm. There was no explanation as to why mental health employees failed to intervene; only CCA security staff were involved in this incident with Mr. Sullivant.³⁸

According to Metro's contract with CCA (Section 4.6), CCA is to provide “24 hour a day, seven days a week emergency medical, psychiatric and dental care.” Apparently, emergent psychiatric care was not provided to Mr. Sullivant in this case, which may have been a contract violation.

Further, it should be noted that the failure to videotape the use of inflammatory agents on Mr. Sullivant is troubling, as it indicates a continued problem in documenting such incidents with video footage. Following the homicide of inmate Estelle Richardson at MDF in 2004, who had a fractured skull, broken ribs and lacerated liver after a cell extraction by four CCA officers that was not videotaped,³⁹ a CCA official said “additional in-service training concerning video camera procedures” was one of the actions taken by CCA in response to Richardson's death.⁴⁰ However, four years later, as indicated by CCA's own records, use-of-force incidents still were not being properly videotaped at MDF, as documented in Mr. Sullivant's case.

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Suicide of Inmate William Williams

MDF inmate William D. Williams committed suicide on Nov. 30, 2009 by hanging himself in his cell. According to a CCA press release, "Medical personnel along with the facility's Emergency Response Team immediately responded to a housing unit where inmate William Williams was found unresponsive in his cell, the victim of an apparent suicide attempt."⁴¹

However, CCA's press release did not mention that Mr. Williams had cut his wrist hours before he committed suicide. CCA medical staff treated his wrist injury but, despite having knowledge of his past mental health problems and suspecting the cut was self-inflicted, did not put him on suicide watch. He was returned to his cell where he hung himself two hours later.⁴²

Mr. Williams' January 21, 2010 autopsy report noted a "1-1/2 inch linear laceration on the left wrist that is closed with butterfly Steri-strips."⁴³ Further, a Daily Log Report from MDF dated November 29, 2009 states that Mr. Williams' "wrist was bleeding and skin was gaped open."⁴⁴ The same Daily Log Report indicates that Mr. Williams returned to his housing unit with his "wrist wrapped up" [sic] just two hours before he committed suicide.⁴⁵

The autopsy report states that Mr. Williams had "informed correction officers he had fallen in his cell and cut his wrist ...," and that he was "taken back to his cell after staff decided his was not a detriment to himself [sic]."⁴⁶

However, it is questionable whether a 1-1/2 inch gaping cut across Mr. Williams' wrist would have been consistent with a fall in his cell. Indeed, one CCA nurse thought the cut may have been self-inflicted.⁴⁷ CCA's on-call psychiatrist was notified of the incident by phone, but took no action. CCA staff apparently did not check Mr. Williams' medical records that documented an incident at a Sheriff's facility five months earlier, when he had stated he was suicidal.⁴⁸

Further, according to Mr. Williams' medical records, during his intake screening at MDF on November 19, 2009, CCA medical staff had referred him for a mental health evaluation. At the time he hung himself on November 30, Mr. Williams still had not received the mental health evaluation that had been noted in his medical records ten days before.⁴⁹

According to Metro's contract with CCA (Section 4.6), CCA is to provide "24 hour a day, seven days a week emergency medical, psychiatric and dental care." Appropriate psychiatric care was not provided in this case, as evidenced by Mr. Williams' suicide after he was returned to his cell despite having a cut across his wrist and known mental health problems, and because he had not received a recommended mental health evaluation in the ten days before he killed himself.

A CCA Incident Investigation Report concerning Mr. Williams' death noted that a CCA officer "did not conduct security checks" as required.⁵⁰ An investigative report by the Sheriff's Office found that CCA staff did not follow cell check policy, and recommended a security audit.⁵¹

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Escape and Delay in Filing Warrant

On February 19, 2008, inmate Terrell Watson escaped from MDF. He was a known escape risk, having previously absconded from at least three other facilities in Maryland, Louisiana and Arkansas.⁵² CCA officials initially thought he was still somewhere inside the facility and waited 48 hours before taking out a warrant for his arrest, which would have notified law enforcement agencies that he was a wanted escapee.⁵³ “They should have done that right away. We would have done that, I think, right away,” Sheriff Daron Hall stated at the time.⁵⁴ Mayor Karl Dean agreed, saying, “We can do better. We need to make sure that we’re getting notice as quickly as we can,” but noted he would “look at the entire situation before I make a judgment.”⁵⁵

According to Section 4.4 of Metro’s contract, “Within 15 days of full execution of the Contract the Contractor shall develop and submit to the Sheriff plans for the search and apprehension of any escaped Inmate. Said plans shall address the Contractor searching for any escapee off the grounds of the Facility and coordination with local and State authorities.” In this case, CCA’s failure to timely file a warrant that would have notified law enforcement officials of Watson’s escape indicates a deficiency in CCA’s policies and possibly a contract violation. CCA officials claimed they were not aware they had to file a warrant; even if that is correct, it demonstrates deficiencies in CCA’s awareness of its obligations under its contract with Metro.

Note: According to the Tenn. Department of Correction, Watson has not yet been apprehended almost two years after his escape from MDF.⁵⁶

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Access to Public Records at MDF

CCA contends that although it operates and incarcerates inmates at MDF, it is not the functional equivalent of a government agency and therefore does not have to comply with the state's Public Records Act. On April 3, 2007, *Prison Legal News*, a non-profit monthly publication that reports on criminal justice issues, submitted a public records request to CCA seeking records related to MDF and other CCA facilities in Tennessee. CCA refused to comply with the request.⁵⁷

Prison Legal News (PLN) filed suit in Chancery Court, arguing that based on precedent from the Tenn. Supreme Court, CCA had to comply with the Public Records Act. CCA countered that it was not the functional equivalent of a government agency and thus did not have to disclose any records, even though it operated correctional facilities and incarcerated inmates under taxpayer-funded contracts with public agencies.⁵⁸ The Chancery Court ruled in PLN's favor on the public records issue.⁵⁹ CCA appealed. The Court of Appeals largely upheld the trial court's decision in a September 16, 2009 ruling, stating, "With all due respect to CCA, this Court is at a loss as to how operating a state prison could be considered anything less than a governmental function."⁶⁰

On March 1, 2010, the Tenn. Supreme Court declined to hear an appeal in the case,⁶¹ which will now be remanded to the Chancery Court for further proceedings. It has been almost three years since PLN requested public records from CCA; to date, no records have been produced.⁶²

CCA apparently does not believe that the public should have access to records regarding the company's operation of MDF, as demonstrated by CCA's refusal to comply with the Public Records Act, necessitating the filing of a lawsuit by PLN.

Although the Sheriff's Office and Metro have the ability to request and review records from CCA pursuant to the contract (Section 3.9), members of the public do not have a similar ability under the plain language of the contract.

As a matter of public accountability, Metro should not be allowed to contract away the public's right to know how their tax dollars are being spent, and CCA should not be allowed to operate outside of public records laws when the company is performing a public function.

Regardless of the final outcome of the PLN litigation, Metro should ensure that members of the public have the ability to obtain information from CCA regarding MDF to the same extent that they can obtain records from the Sheriff's Office under the Public Records Act.

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CCA Records Withheld from Metro?

It is also questionable whether Metro is receiving all relevant records from CCA regarding the company's operation of MDF.

On March 13, 2008, *Time* magazine reported that Ronald T. Jones, a former high-ranking CCA quality assurance manager in the company's Nashville corporate office, had gone public with accusations that CCA maintained two sets of internal quality assurance reports. One report was provided to contracting government agencies, while a more detailed report with the auditors' comments was labeled "attorney client privileged" for CCA's in-house use only.⁶³

CCA's general counsel, Gus Puryear, who had been nominated for a federal judgeship at the time,⁶⁴ responded in writing to questions from U.S. Senator Dianne Feinstein regarding the allegations raised by Mr. Jones. Referring to the detailed audit reports, Senator Feinstein asked Mr. Puryear, "Were CCA's contract partners (including federal, state, and/or local corrections authorities) aware?" Mr. Puryear replied, "Because the intent was to use such documents for internal purposes only, so that auditors would feel free to make candid observations to help protect the health and safety of CCA's employees and inmates, *we did not make customers aware of these documents*" (emphasis added). Senator Feinstein further inquired if anyone else was aware of CCA's detailed audit reports. Mr. Puryear answered, "CCA did not make anyone else aware to my knowledge."⁶⁵

Senator Feinstein also asked, "Has CCA ever shared such documents with a contract partner or with others?" Mr. Puryear replied, "CCA does share the audit report containing ratings and measurements, but not the separate commentary made by auditors. I am not aware of any request to share such documents."⁶⁶ It is not surprising that Metro has not made such a request, because, as Mr. Puryear noted, CCA does "not make customers aware of these documents." It is difficult to ask for records if you don't know they exist because you are not told about them.

According to Metro's contract with CCA (Section 3.9), "The Contract Monitors shall have immediate, complete, and unrestricted access to all documents in any way pertaining to the obligations of Contractor under this Contract..." CCA's apparent failure to provide Metro with the company's detailed audit reports of MDF, or to inform Metro that such records exist, may constitute a contract violation.

Also, while information related to CCA's operation of MDF is made available to the Sheriff's Office upon request pursuant to Section 3.8 of the contract (e.g., CCA employee turnover rates, lawsuits involving MDF, employee disciplinary reports, etc.), in some cases no requests were made by the Sheriff's Office, and thus such records were not provided by CCA. As of March 2010, the Sheriff's Office indicated it was reviewing CCA's reporting requirements.⁶⁷

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Failure to Timely Repair Equipment

According to the monthly reports generated by Metro's monitor at MDF, ten of those reports, from January 2007 through December 2007, noted problems with the "M/C board" at the facility – referring to the Master Control board. Typically, the Master Control board is used to open and close doors and monitor inmate activities, including the emergency call buttons located in cells that inmates can use to contact CCA staff. Despite the monitor's repeated notation of problems with the Master Control board, those problems persisted for almost a full year.⁶⁸

When former CCA Captain Patrick Perry contacted the Metro Health Dept. concerning Mr. Horton, he also "reported concerns regarding an inmate's ability to use a 'call system – a call light and/or buzzer' in segregation to alert officers in the event of an emergency." Mr. Perry stated the "system worked sporadically and was not reliable," and that CCA "knew the call system was a problem but did nothing about it," as documented in a memo from Catherine Seigenthaler at the Metro Health Department.⁶⁹

Former MDF Warden Brian Gardner acknowledged in a deposition that there were problems with the call buttons, though he did not specify the scope of the problem. He also claimed the delay in fixing the problem was attributed to Metro, not CCA.⁷⁰

Although Metro's monitor at MDF repeatedly noted these problems in his monthly reports, the problems persisted for a lengthy period of time with no apparent enforcement by Metro to ensure that CCA was complying with its contractual obligations. As noted above in the section related to the murder of inmate Gerald Townsend (p.8), the non-functional emergency call buttons may have contributed to a serious inmate assault as well as the death of Mr. Townsend.

According to Section 3.5 of Metro's contract with CCA, CCA "shall maintain the physical structure of the Facility and all movable property and equipment contained therein. Contractor shall provide all maintenance, including a preventive maintenance program, which will maintain, preserve and keep the physical structure, fixtures and equipment in good repair, working order and condition, subject to normal wear and tear." The failure to timely repair the Master Control board, and to ensure that the emergency call buttons at MDF were working properly, may have constituted violations of Metro's contract.

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Wage and Overtime Lawsuits

In February 2009, CCA settled a class-action lawsuit brought under the Fair Labor Standards Act (FLSA) for wage and hour violations, which alleged that CCA had not compensated its employees for all of the time that they worked.⁷¹

Specifically, according to an order entered by the U.S. District Court, the suit alleged “that CCA regularly required its corrections officers, corrections counselors, case managers and clerical employees to perform off-the-clock pre-shift work and regularly required its corrections officers to perform off-the-clock post-shift work in violation of the Fair Labor Standards Act.”⁷²

Although filed in Kansas, the federal lawsuit was brought on behalf of current and former CCA employees nationwide, including those at MDF who participated in the settlement. CCA agreed to pay a maximum of \$7 million under the terms of the settlement agreement.⁷³ The settlement was confidential but was later unsealed by the court and made public.⁷⁴

A second nationwide class-action wage lawsuit is presently pending against CCA, also filed in the U.S. District Court in Kansas.⁷⁵ That suit alleges that CCA improperly classified assistant shift supervisors as exempt employees for overtime purposes, and therefore failed to pay them overtime wages. On February 10, 2010 the court granted the parties' joint motion for conditional certification of class members in the lawsuit, and notices were sent to current and former CCA employees who may be eligible to participate in the suit, including those at MDF.⁷⁶

According to Section 4.1 of Metro's contract, “The Contractor shall operate and maintain the Facility in accordance with all applicable constitutional standards, federal, state and local laws” This includes labor laws, as indicated by Section 7.1 of the contract, which provides that CCA will indemnify Metro for failing to observe “the laws of the United States and the State of Tennessee, including but not limited to labor laws and minimum wage laws.” To the extent that CCA failed to follow wage and labor laws, resulting in the company's \$7 million settlement in the class-action FLSA lawsuit and the pending class-action suit related to overtime wages, that failure may have constituted a contract violation.

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Conclusion

Based upon the foregoing incidents and issues related to MDF, TIPA is concerned that Metro's renewed contract with CCA lacks sufficient oversight and compliance mechanisms to sanction CCA for contract violations. Additionally, it is questionable that an \$11 million increase in the contract amount is justified given CCA's past track record in operating MDF.

According to the Davidson County Sheriff's Office, despite the litany of incidents listed above, particularly those that resulted in potential or apparent contract violations, Metro has imposed no monetary penalties against CCA or withheld any funds under the contract as sanctions for non-compliance.⁷⁷ In fact, the contract *does not allow* Metro to levy any sanctions or fines for violations, only to seek judgments through litigation or to terminate the contract.

Section 8.5 of the contract states, "Upon the occurrence of an Event of Default either party shall have the right to pursue any remedy it may have at law or in equity, including but not limited to: (a) reducing its claim to judgment, (b) taking action to cure the Event of Default, and (c) termination of the Contract."

Events of Default do not encompass all contract violations; rather, they include "material breach, which is the persistent failure or refusal by contractor to substantially fulfill any of its obligations under this Contract" (Section 8.3). Therefore, there are no apparent means of enforcement to remedy contract violations that do not reach the level of default, nor is there a way to remedy a default other than through litigation or terminating the contract with CCA.

This limits Metro's ability to ensure contractual compliance by CCA, and raises serious concerns as to whether Metro taxpayers are receiving the value they are paying for under the \$91.8 million contract, given the incidents and issues described in this report.

Lastly, based on the \$11 million increase in the cost of Metro's contract with CCA over the cost of the prior contract, Metro may want to assess whether it would be more economical to cancel the contract and have the Sheriff's Office assume management over MDF. The Sheriff's Office would not have to generate profit, unlike CCA, and thus the profit margin factored into CCA's operating costs would inure to the benefit of Metro.

For example, in October 2008, the Sheriff in Bay County, Florida assumed control over the county jail from CCA after the company had operated the facility since 1985.⁷⁸ According to news reports, in the first year after the Sheriff took over, he returned almost \$2 million to the county in unspent funds despite an expected increase in start-up costs.⁷⁹ Currently, officials in Hernando County, Florida are considering canceling CCA's contract to operate their jail after the Sheriff announced he could manage the facility at a lower cost.⁸⁰

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TIPA Recommendations

1. Amend Metro's contract with CCA to increase the number of monitors at MDF from two (one from the Sheriff's Office and one from the Metro Health Dept.) to three, with the third monitor being either another staff member from the Sheriff's Office or potentially an independent ombudsman. The cost of the third monitor should be paid by CCA as a mandatory requirement under the amended contract.
2. Given the repeated incidents related to inmates with mental health issues (placement of a mentally ill prisoner in a cell with inmate Gerald Townsend, resulting in Townsend's death; the suicide of inmate William Williams; the treatment of inmate Frank Horton; the incident involving prisoner Mark Sullivan), Metro should require additional safeguards and/or monitoring through the Metro Health Department to ensure that inmates at MDF receive adequate mental health care by full-time on-site CCA mental health staff.
3. Ensure that deficiencies or problems noted in monitor reports are corrected in a timely manner, and that CCA is required to fulfill its contractual obligations. There should be a designated official who is responsible for reviewing the monitor's reports and ensuring that remedial action is taken. As noted above, some problems at MDF, such as the non-functional emergency call buttons, the Master Control board and unsanitary conditions in segregation, were allowed to persist for months despite being cited by the monitor.
4. Amend Metro's contract to specify that CCA can be subjected to graduated sanctions for non-compliance or contract violations, e.g., through the use of fines or reductions in the contractual payments. Metro should ensure that it has policies and procedures in place to evaluate possible contract violations and impose sanctions where appropriate.
5. Amend Metro's contract to require CCA to comply with Tennessee's Public Records Act, so citizens can obtain information from CCA regarding MDF to the same extent that they can obtain information from Metro agencies such as the Sheriff's Office.
6. Commission a study to assess whether it would be more economical to cancel Metro's contract with CCA and have the Sheriff's Office assume control over MDF.

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END NOTES

¹ Metro Management Services Contract, No. 18612.

² Ibid.

³ Communication with Pat Edwards, Metro Dept. of Finance, Division of Purchases, Feb. 17, 2010.

⁴ Tennessean, November 28, 2008; autopsy report of Terry Battle (Office of the Medical Examiner, MEC 080-1988), July 7, 2008.

⁵ Autopsy report of Terry Battle (Office of the Medical Examiner, MEC 080-1988), July 7, 2008.

⁶ Battle v. CCA, draft federal lawsuit complaint, not filed due to pre-litigation settlement.

⁷ Ibid.; phone interview with Mrs. Barbara Cawthorne on Feb. 11, 2010.

⁸ Affidavit of Teresa G. Hazelwood, filed in Manning v. CCA, Third Circuit Court for Davidson County, Case No. 05C-2608, dated Feb. 15, 2006.

⁹ Tennessean, Oct. 1, 2005.

¹⁰ Tennessean, Nov. 28, 2008; Battle v. CCA, U.S.D.C. (MD Tenn.), Case No. 3:08-cv-00986.

¹¹ Deposition of Patrick Perry in Braswell v. CCA, U.S.D.C. (MD Tenn.), Case No. 3:08-cv-00691, pp.92-93.

¹² Tennessean, March 24, 2008; News Channel 5, Oct. 30, 2008.

¹³ Memo from Catherine Seigenthaler, Metro Public Health Dept., Jan. 31, 2008.

¹⁴ News Channel 5, Oct. 30, 2008.

¹⁵ Metro contract monitor reports from MDF, June-October 2007.

¹⁶ News Channel 5, Oct. 30, 2008.

¹⁷ Memo from Catherine Seigenthaler, Metro Public Health Dept., Jan. 31, 2008.

¹⁸ Braswell v. CCA, U.S.D.C. (MD Tenn.), Case No. 3:08-cv-00691.

¹⁹ Ibid.; Tennessean, Aug. 25 and 26 2009; News Channel 5, Aug. 25, 2009.

²⁰ Deposition of Patrick Perry in Braswell v. CCA, U.S.D.C. (MD Tenn.), Case No. 3:08-cv-00691, pp.25-26.

²¹ Ibid.; deposition of Patrick Perry in Townsend v. CCA, U.S.D.C. (MD Tenn.), Case No. 3:08-cv-00697, pp.14-16.

²² Deposition of Patrick Perry in Braswell v. CCA, U.S.D.C. (MD Tenn.), Case No. 3:08-cv-00691, pp.25-26.

²³ Memo from Catherine Seigenthaler, Metro Public Health Dept., Jan. 31, 2008.

²⁴ CCA Safety & Control report, Oct. 12, 2006.

²⁵ Deposition of Patrick Perry in Townsend v. CCA, U.S.D.C. (MD Tenn.), Case No. 3:08-cv-00697, p.6.

²⁶ News Channel 5, Jan. 14, 2008; Nashville Scene, June 26, 2008.

²⁷ Nashville Scene, June 19, 2008.

²⁸ Deposition of Patrick Perry in Braswell v. CCA, U.S.D.C. (MD Tenn.), Case No. 3:08-cv-00691, pp.74-75.

²⁹ Ibid., p.76; Deposition of Patrick Perry in Townsend v. CCA, U.S.D.C. (MD Tenn.), Case No. 3:08-cv-00697, p.26.

³⁰ Deposition of Patrick Perry in Townsend v. CCA, U.S.D.C. (MD Tenn.), Case No. 3:08-cv-00697, p.49.

³¹ Ibid., p.21.

³² Deposition of Brian Gardner in Braswell v. CCA, U.S.D.C. (MD Tenn.), Case No. 3:08-cv-00691, pp.13-15.

³³ CCA Internal Investigation Review, Aug. 18, 2009.

³⁴ Ibid.

³⁵ CCA Facility Employee Problem Solving Notice, Aug. 25, 2008.

³⁶ CCA Internal Investigation Review, Aug. 18, 2009.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Nashville Scene, March 21 and 27, 2008; Tennessean, Aug. 1, 2008; News Channel 5, July 1, 2008.

⁴⁰ Written responses by CCA general counsel Gus Puryear to questions from U.S. Senator Patrick Leahy, undated (c. March 2008).

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- ⁴¹ CCA press release, Nov. 30, 2009.
- ⁴² Autopsy report of William Williams (Office of the Medical Examiner, MEC09-2309), Jan. 21, 2010.
- ⁴³ Ibid.
- ⁴⁴ CCA MDF Daily Log Report, entry dated 11/29/2009, 22:58:30
- ⁴⁵ Ibid., entry dated 11/29/2009, 00:59:06.
- ⁴⁶ Autopsy report of William Williams (Office of the Medical Examiner, MEC09-2309). See also: CCA MDF Daily Log Report, entry dated 11/29/2009, 22:58:30 (stating Williams "fell on dresser and slit his left wrist").
- ⁴⁷ Memorandum, investigation into William Williams' death, Davidson Co. Sheriff's Office, March 2, 2010.
- ⁴⁸ Ibid.
- ⁴⁹ Medical records for William Williams, inmate no. 346389, from Metro Public Health Dept.
- ⁵⁰ CCA Incident Investigation Report, Incident No. 2009-0107-171-I, dated Dec. 1, 2009.
- ⁵¹ Memorandum, investigation into William Williams' death, Davidson Co. Sheriff's Office, March 2, 2010.
- ⁵² Tennessean, Feb. 20, 2008; WSMV, Feb. 18, 2008.
- ⁵³ WSMV, Feb. 20, 2008.
- ⁵⁴ Ibid.
- ⁵⁵ Ibid.
- ⁵⁶ Phone interview with TDOC internal affairs office, Feb. 9, 2010.
- ⁵⁷ Friedmann v. CCA, Chancery Court for Davidson County, Case No. 08-1105-I.
- ⁵⁸ Ibid.
- ⁵⁹ Tennessean, July 30, 2008; CNN, July 29, 2008.
- ⁶⁰ Friedmann v. CCA, Tenn. Court of Appeals, Case No. M2008-01998-COA-R3-CV, Sept. 16, 2009 (revised ruling); Tennessean, Aug. 7, 2009.
- ⁶¹ Order by Tenn. Supreme Court in Friedmann v. CCA, Case No. M2008-01998-SC-R11-CV, March 1, 2010.
- ⁶² Communication with Prison Legal News, March 5, 2010.
- ⁶³ Time Magazine, March 13, 2008; Tennessean, March 14, 2008; statement by Ronald T. Jones, Feb. 24, 2008.
- ⁶⁴ Tennessean, Feb. 13, 2008; Nashville Scene, March 5, 2008; AlterNet, May 5 and 6, 2008.
- ⁶⁵ Written responses by CCA general counsel Gus Puryear to Sen. Dianne Feinstein, pp. 5-7, undated.
- ⁶⁶ Ibid.
- ⁶⁷ Communication with Davidson Co. Sheriff's Office, March 8, 2010.
- ⁶⁸ Metro contract monitor reports from MDF, Jan.-Dec. 2007.
- ⁶⁹ Memo from Catherine Seigenthaler, Metro Public Health Dept., Jan. 31, 2008.
- ⁷⁰ Deposition of Brian Gardner in Braswell v. CCA, U.S.D.C. (MD Tenn.), Case No. 3:08-cv-00691, pp.125-127.
- ⁷¹ Barnwell v. CCA, U.S.D.C. (D. Kan.), Case No. 2:08-cv-02151; Kansas City Star, Aug. 31, 2009.
- ⁷² Barnwell v. CCA, U.S.D.C. (D. Kan.), Case No. 2:08-cv-02151, Order entered Aug. 27, 2009.
- ⁷³ Ibid., Order approving settlement, Feb. 12, 2009.
- ⁷⁴ Kansas City Star, Aug. 31, 2009; Prison Legal News press release, Aug. 28, 2009.
- ⁷⁵ McFadden v. CCA, U.S.D.C. (D. Kan.), Case No. 2:09-cv-02273-EFM.
- ⁷⁶ Ibid.
- ⁷⁷ Communication with Davidson Co. Sheriff's Office, Feb. 9, 2010.
- ⁷⁸ WJHG, May 13, 2008; News Herald, June 16 and Oct. 7, 2008.
- ⁷⁹ Hernando Today, March 3, 2010.
- ⁸⁰ St. Petersburg Times, March 4 and 9, 2010; Hernando Today, March 2 and 10, 2010.